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Colorado Bar Association in 1943

BY EDWARD L. WOOD*

Another year in the life of the Colorado Bar Association is drawing to a close. For me, as your president, it has been a busy and most interesting year. It has been my good fortune during this period to have experienced a close association with some of the most vigorous minds in Colorado and elsewhere, and this at a time in our national existence when critical affairs have taxed every man to the very limit of his capacity. I entered upon this work with an affection for lawyers. As I approach the end of it, I realize that this affection has been many times multiplied and strengthened. The lawyers are performing well in this period of emergency. No other group has been more keenly aware of life's greater values in the United States and no other group is contributing more in the fight to retain them.

Fifteen per cent of all Colorado lawyers, and sixteen per cent of all the members of this association are in the active military service of the United States. And the rest of us who remain at home as civilians can well be proud of our own personal contribution to the welfare of our fighting men everywhere. At every Army and Navy post, camp and station in the United States there are now legal assistance offices conducted in cooperation with bar association committees. This is something entirely new in the military history of this country, and the plan had its inception in the lawyers war emergency committee of the Colorado Bar Association. A property guide for men in the military service has been compiled within the last few months by this same committee and we are advised that this guide will be embodied in a new pamphlet soon to be distributed by the War Department to selective service offices and to Army and Navy recruiting stations in all parts of the United States. Service men everywhere are receiving invaluable benefits from the operation of these plans, and I am happy to report that because of the splendid efforts of our war emergency committee and our legal aid committee, there has not been in Colorado, so far as we know,

*President of the Colorado Bar Association, 1943. Address delivered at the annual meeting at Colorado Springs, September 17, 1943.

a single call for legal assistance in any part of the state that has not been properly and promptly handled by the members of the Colorado bar.

While subjects relating to the war emergency have necessarily employed the major portion of our thought and energy, we have found time to continue and extend our activities upon many other subjects of vital concern to the public and to the legal profession.

Judge John J. Parker of the Fourth United States Circuit Court of Appeals wrote to me earlier this year that "no service that can be rendered by a lawyer is of greater importance than improving the administration of justice." I think neither the lawyers nor the public commonly realize the tremendous contributions we are continually making towards this great objective. Improving the administration of justice has been the major concern of seven separate sections and committees of this association during the past year. The section on water law accomplished the passage by the legislature this year of a procedural code on water rights. The section is now turning its attention to other phases of water law. The section on probate law and procedure, while securing the adoption by the legislature of some amendments to our probate law, failed of its major purpose to secure the enactment of a new probate code. The unsolved problems still facing these two sections are complex and difficult. Both are attacking them forthrightly and with vigor. Our special committee on the selection of jurors in the federal courts has very carefully considered this subject and has reported in detail to the Judicial Conference of the United States Senior Circuit Judges. Our committee on traffic courts, only recently appointed, has already held several meetings throughout the state in conjunction with the office of the attorney general and the state courtesy patrol. The committee to study the *Model Code of Evidence* proposed by the American Law Institute has made some progress in its work although the importance and immensity of its task necessarily means that the work has only been commenced. Within recent weeks, our criminal law and procedure has been the subject of much discussion. A temporary committee appointed to consider the advisability of revision has concluded after careful study that revision is urgently needed. The district judges and district attorneys of the state, at whose suggestion this committee was appointed, almost unanimously feel that this work of revision should be undertaken by the Colorado Bar Association. The appointment of a permanent committee to accomplish this task will of course fall to the incoming president of the association. The seventh committee of the Colorado Bar Association that has given attention to the administration of justice is a special committee which we have named the special committee of the Colorado Bar Association on improving the administration of justice. This committee was not appointed to work upon the revision of any particular statutes. It was rather appointed to operate as a coordinating

agency between these other several committees, and also to devise adequate machinery whereby the ever-continuing work of improving the administration of justice may be adequately financed and may receive officially and constantly the thought and attention of some appropriate body of our state government. The needs of society are in such a constant state of flux that the tremendous task of keeping our laws up to date simply cannot be handled in adequate fashion by any voluntary bar association that is constantly harassed with financial problems. Many other states have solved this problem through the judicial council, a state-financed body specifically charged with the duty of recommending to the legislature statutory changes required for improving the administration of justice. Our special committee on this subject has submitted a report that should receive the careful attention of all members of this association. It feels that the creation of some form of judicial council in this state is most desirable, if not essential to the proper functioning of our judicial system.

The Colorado Bar Association is every day assuming a more important position in the affairs of this state. Less than two months ago there was presented to me as president of this association a copy of resolution adopted by the general interim committee of the Thirty-fourth General Assembly which met at Denver on July 19 and 20, 1943. I am going to read that resolution.

> "WHEREAS, It is the opinion of the General Interim Committee of the 34th General Assembly that there are many statutes of the State of Colorado which are obsolete, and can, with benefit to the State, be repealed or revised;
>
> "NOW, THEREFORE, Be It Resolved by the General Interim Committee of the 34th General Assembly, that the President or other proper authority of the Colorado Bar Association be requested to appoint a committee or committees to study the constitution and statutes of Colorado, for the purpose of finding obsolete and unnecessary statutes or parts thereof, and recommending their repeal or revision; and that such committee or committees be requested to report any findings to the General Interim Committee or its proper sub-committee."

Now that assignment is not a small one. I wonder whether all the members of the interim committee realized just how large an assignment it actually was. Well, we're going to do our best to meet this responsibility. We want the legislature to know that one of the major purposes of this association is to serve the State of Colorado and its citizens. I have not appointed a committee to undertake this work. The time seemed too short before the end of my term of office, and much of the work is of course already receiving the attention of

the seven committees I have mentioned. It is scarcely necessary for me to say that this problem is going to be a very real one for your next president. I know that with your assistance he will make substantial progress in it during the next year.

My remarks up to this point have dealt exclusively with the contributions this association is making to society. I want to talk now for a moment about our own interests. One of the most earnest and hard-working committees we have had this past year was the committee on minimum fees and schedules. The report of this committee has already been read to you. I am not prepared to express an opinion on the advisability of minimum fee schedules. I am prepared to say that the lawyers generally are not receiving adequate compensation for their services. Particularly is this true when we consider the great contributions that the lawyers of this state are continuously making both to the individual and to the state without any financial remuneration whatever. The question of fees should have our most careful consideration. They must be adequate. That they be so is important to the public as well as to us individually. It takes no argument to convince that the public is the loser if attorney fees are not sufficient to justify "studious and painstaking effort" on the part of the attorney. Let us follow through vigorously and decisively upon the excellent report of the committee that has had this subject under consideration.

I wish to say something to you about the proposed amendments to the by-laws. First, the amendment concerning committees. It will be apparent to you from the remarks I have already made that while standing committees are essential, the bulk of the association work is at all times performed by special committees. As the by-laws now stand, the president is not empowered to create any special committees. That function can be exercised only by the board of governors. The crippling effect of this limitation upon the work of the association has never been more apparent than this year. The creation of several very important committees was delayed for several months awaiting a meeting of the board of governors. It is not always possible to anticipate what special committees will be needed. New problems arise every day. The proposed amendment corrects this situation, giving to the president the power to create and appoint special committees but reserving to the board of governors the right to abolish any special committee at any time. The proposed amendment also abolishes several standing committees which have been serving no useful purpose, it creates one new standing committee, the urgently needed committee on legislation, and it empowers the board of governors and the executive committee to create from time to time such additional standing committees as they

may deem expedient. I solicit your favorable consideration of this proposed amendment.

The other proposed amendment to the by-laws would increase the dues of the association from $3 to $5 per year. The importance of this proposal as it concerns the welfare of this association and its members cannot be over-estimated. With the extension of our activities, the need for adequate funds has become more pressing than ever before. In this connection, however, let me say that we are now solvent. On September 15, 1943, we had on hand a net cash balance of $546.04. This happy situation, a circumstance by the way that is a new experience in the life of this association, is not an indication that our present dues are adequate. Our comfortable net cash balance is attributable wholly to the efforts of our committee on sustaining memberships. Forty-seven of our members have contributed this year to our sustaining membership fund. Forty-two contributed $25 each in addition to their regular dues. The total amount received into the fund during the year was $1,107. The significance of these figures is obvious. Without the sustaining membership contributions we would be badly in the hole. The committee on sustaining memberships and the board of governors both feel that the principle of the sustaining membership is wrong—that we should not solicit these contributions any longer than may be absolutely necessary. The only answer is to increase our regular dues. Some of the local associations have already gone on record favoring the increase. Others have had no opportunity to consider it. That we have been getting our money's worth at $3 per year will be conceded, I feel very certain, by everyone here. That we will still be getting our money's worth at $5 per year will be conceded, I think, by everyone here. The increase ought therefore to be made.

Now there is something else that I want to say in connection with this proposed increase in dues. We have been able to work out an arrangement with a Denver publisher that will give you lawyers a service that I think is unequaled anywhere in the United States. How would you like to have laid down on your desk every Tuesday morning a complete printed copy of every opinion rendered by the Colorado Supreme Court on the day before? And would it interest you also to find printed in the same paper all bar association news of the preceding work for the entire United States? Well, we are in a position to furnish this service to members of the Colorado Bar Association for a total cost of $1 per member per year. That is less than two cents per week, and obviously the actual cost of the service will far exceed that amount. But we can furnish this service providing our association income will permit us to pay for the service $1 per member per year. I feel I should make no further announcement of the details of this plan at the present time since the plan has not as yet been approved

either by the board of governors of this association or by the Colorado Supreme Court. We feel that the court will undoubtedly approve the plan as it will result in no expense whatever either to the court or to the state.

And now a few words concerning our 1943 campaign to integrate the Colorado bar. Our failure is regrettable, but we came closer to success than ever before. May I say to you that I think the integration of the Colorado bar, with its many resulting benefits to the lawyer and the public, is absolutely inevitable. We do not want it of course unless a preponderating majority of the lawyers of Colorado want it. There was in this last campaign for integration still a substantial minority of lawyers who opposed it. I am convinced that this opposition exists because the plan is not thoroughly understood, and I am convinced that when the facts of integration actually reach every lawyer in the state, no less than ninety per cent of the entire bar will favor the plan. I think there can be no doubt now that if we lawyers want an integrated bar the legislature and the supreme court will give it to us. The court and the legislature both are finding the assistance of this association to be of increasing value in their own work. So long as they call upon us for assistance, we have the right to ask that our assistance be made more effective through improved bar government and through improved financial position. It continues to be the opinion of the 1943 board of governors that we cannot discharge our responsibilities effectively or completely unless and until the bar of Colorado is integrated. I want to read to you a resolution adopted by the last board of governors at its meeting in Denver June 5, 1943:

> "RESOLVED: This Board recommends to the incoming Board of Governors and to the incoming President of the Colorado Bar Association that a committee on integration be promptly appointed to encourage continued discussion of the subject among the lawyers throughout the State to the end that the issue may be formally considered and voted upon at the 1944 annual meeting of the association."

During the heat of the campaign in the spring of this year to integrate the Colorado bar, I wrote to the members of the board of governors that whatever the result of the campaign we could not permit any bitterness to arise in the minds of our members. I am happy to say that so far as I know there is no bitterness as a result of this campaign in the minds either of our members or of those Colorado lawyers who are not included within our membership. This is a most desirable state of affairs. The continued good health of this association is far more important than any organization issue that could possibly confront it.

There is much I would like to say about the work during the past year of certain association committees I have not mentioned in this report, but shortness of time prevents. May I say to you, however, that as I sat in my office earlier this week reading over the committee reports, I felt a sense of gratefulness and contentment that so much of the thought of lawyers is directed towards unselfish ends. You have made the work of the president this year a pleasure and a satisfaction —not a burden.

In closing, may I refer once again to the war and to our own part in it. The casualties are beginning to reach us. Up to the present time we have lost in dead or missing, four men, Joseph Johnston and Alvin Rosenbaum, of Denver, James L. Lang, of Castle Rock, and John B. Stivers, of Montrose. Very soon we will be learning of many more. We are doing what we can to stay close to the men in the service. DICTA and the LOOSE LEAF SERVICE are sent to all free of charge and their dues to this association are waived for the duration. Within the past few months our secretary has been writing a monthly news letter to all of our members in the service. These letters refer to our activities at home and they tell all we know about the men in service. The warm responses that we have received from our members all over the world would touch your hearts. I will not try to describe them. A number of the letters have been placed upon the bulletin board and you may read them yourselves if you wish to do so.

We must not let up on the little things we are now doing for these men. They appreciate them very greatly. We must not relax in our efforts to strengthen this association. The stronger we become as a bar organization, the sounder will be our individual position at the war's end. This means a better place in life for those who return from the war. This much at the very least we owe to our members in the service. Let's keep up the good work.

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HONOR ROLL

Members of the Denver Bar Association Who Have Lost Their Lives in the Service of the United Nations

Alvin Rosenbaum, First Lieutenant, United States Army Air Forces, August 2, 1943.

Rule for Dismissal of Inactive Cases Suspended

At the *en banc* session of the judges of the Denver district court for the opening of the September term of court, the judges ordered the suspension of Section 1, Rule XVIII, until the further order of the court. This was done to protect the interests of the many attorneys and litigants who are now with the armed forces.

Section 1 of Rule XVIII provides that the clerk of the court, at the opening of the September term of each year, shall report to the judges the cases pending in their respective civil divisions in which no order or progress has been made and entered of record for a period of twelve months. All such cases shall be dismissed with prejudice thirty days after service of written notice by the clerk to attorneys of record or parties, at their last known addresses, unless good cause shall be shown why the same should not be dismissed.

A Christmas Message from the President of the Colorado Bar Association

Regardless of earthly events—of our work, our wishes, our privations or pleasures; of good times or bad; of tribulations, trials and taxes; of war, destitution and death—time awaits not, nor even slows his even pace. And so it is that, surprisingly soon, the Holiday Season will again be upon us.

On behalf of the Colorado Bar Association, its officers and staff, and from mingled emotions of joy and sadness, I bring to our members, their families, friends and loved ones, Christmas greetings and the following Holiday sentiments:

To our boys overseas and in the services, may God ever bless and stand beside you; give you faith and courage and strength to carry on; and, when war is done, again bring you safely home!

To those saddened groups of whom war has exacted its toll, leaving forever vacancies in the family circle, words fail to express the feelings in our hearts. We can do no more than humbly extend our condolences; assure you of our deep sympathy in your great loss; and pledge to you that forever hereafter we shall remember with honor and reverence their gallant services and glorious sacrifices.

As for the rest of us on the "home front," as we again turn our faces to the east to behold the magic Star of Bethlehem, may we renew our pledge of loyalty to our great nation, and solemnly resolve that we shall unselfishly devote our means and our energies to her protection and perpetuation in the American way, guarding off and throwing out all borrowed doctrines and foreign ideologies. So that, when hostilities end, we Americans, led by American lawyers, may fulfill our Destiny; that, lighting the way for blinded and deluded peoples of the earth, we may hold the torch of Freedom and Liberty; that we may bring to full realization our ideals of Right, Truth and Justice, and that, by precept and example, our Star may shine so brightly that the world will thenceforth face the West and look to us for guidance in the ways of Peace and Brotherhood.

JOHN R. CLARK, President
Colorado Bar Association.

Federal Tax Liens on Real Estate

BY GEORGE T. EVANS*

This discussion of the subject assigned to me (War Legislation and Its Effect on Property Rights) will not cover the broad field indicated by the title. Time does not permit it. In fact what I have to say will be confined to a single case decided by the Supreme Court of the United States January 4, 1943, in what seems to be a "bombshell" opinion, the full significance of which perhaps is not fully appreciated by some lawyers engaged in passing upon real estate titles. The case to which I have referred is *Detroit Bank v. United States*, 317 U. S. 329; 87 L. ed., No. 6, 266, 63 Sup. Ct., No. 5, 297.

The main question under examination may be stated thus: Does the United States have a valid, though unrecorded, lien for federal estate tax on real estate passing through the taxable estate of a decedent, which may be enforced within ten years from the date of the decedent's death against a good-faith mortgagee (without notice) who has foreclosed against mortgagor-heirs, who in good faith and without notice of the claim of the United States, mortgaged the property after distribution of the estate?

The Supreme Court has said that the answer is "Yes" in its opinion above cited. Its reasoning will appear below. The facts and the law in summary form were as follows:

A man named Paul, living in Detroit, Michigan, owned real estate with his wife as tenants by the entirety. He died leaving an estate large enough to be subject to federal estate tax. A federal estate tax return was prepared and filed for his estate but none of the real estate owned by Mr. Paul and his wife as tenants by the entirety was included in the gross estate for federal estate tax purposes. The tax shown due by the return was paid. The estate was closed and distributed. Part of the real estate was, apparently, conveyed by Mrs. Paul to her children. Subsequently the children and Mrs. Paul mortgaged the real estate to the Detroit bank, defaulted, and the bank foreclosed and took title to the real estate.

The United States proposed an estate tax deficiency against the estate of the decedent, was apparently unable to effect collection of the tax in any other manner, and so brought suit in the United States District Court pursuant to Section 3207 R. S. to foreclose its lien derived under Section 315 (a) of the REVENUE ACT OF 1926, now Section 827 (a) of the INTERNAL REVENUE CODE. The defendant was the mortgagee bank.

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*Of the Denver bar.

The laws of Michigan provided for the filing of notices of tax liens in the offices of the registrar of deeds in the counties of that state.

Section 3186 R. S., now Sections 3670 to 3672, inclusive, of the INTERNAL REVENUE CODE (hereinafter called the "Code") provided a lien for unpaid taxes of any kind (after demand therefor) in favor of the United States, but contained the limitation that "such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the Collector in the office of the clerk of the district court of the district within which the property subject to lien is situated * * *" and it further provided that where any state had by legislation required the filing of notice of lien in the office of the registrar or recorder of deeds, "then such liens shall not be valid in that state against any mortgagee, purchaser or judgment creditor until such notice shall be filed."

None of the conditions imposed by Section 3186 R. S., or by the corresponding sections of the Code, had been met by the United States.

Section 315 (a) of the REVENUE ACT OF 1926, the statute actually before the court, which is identical with subsisting Section 827 (a) of the Code, was as follows:

> "Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of the estate has been fully discharged or provided for, he may, under regulations prescribed by him, with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed."

In this situation the defendant bank alleged that it was the victim of a secret lien which, if enforced against it, in the circumstances of the case, would violate the Fifth Amendment to the Constitution of the United States. Said the court, in part:

> "Section 3186 refers only to liens which are made such by that section. Section 315 (a) authorizes the lien for estate taxes and makes no reference to R. S. 3186, or to any requirement for recording notice of lien. The lien of R. S. 3186 is upon all the property of the person liable for the tax, while the lien of §315 (a) attaches only to the property included in and taxed as the gross estate not used to pay administration expenses. The lien of R. S. 3186 continues until the tax liability is paid while the lien of §315 (a) continues for ten years from the death of the decedent. Of particular significance is the difference in time when the

liens attach under the two sections. Under R. S. 3186 there is no lien and no notice can be recorded until there has been a demand by the collector and a refusal to pay it by the taxpayer. Under §315 (a) as has been stated, the lien arises on the death of the decedent and becomes effective against purchasers and mortgagees without assessment or demand and obviously before it would be possible to record a notice of lien under the provisions of R. S. 3186.

"* * * Moreover it is not without significance that Congress, in enacting a gift tax in the Revenue Act of 1932, provided in §510 of that Act that the gift tax should be a lien on the property passing to the donee, using words almost identical to these of §315 (a). The committee reports state that 'by this provision there is imposed a lien additional to that imposed by section 3186 of the Revised Statutes' H. Rep. No. 708, 72d Cong. 1st Sess. 30; Sen. Rep. No. 665, 72d Cong. 1st Sess. 42. This history and the differences between the provisions already noted, would seem to compel the conclusion that §315 (a) was intended to operate independently of R. S. 3186, and that the estate tax lien created by the former is not subject to the latter's requirement of recordation. * * *

"Petitioner (the bank) also insists that the statute violates the Fifth Amendment by authorizing an unrecorded tax lien against the property mortgaged to it and withholding such a lien against innocent purchasers of property which a decedent had transferred *inter vivos* in contemplation of death. Unlike the Fourteenth Amendment, the fifth contains no equal protection clause and it provides no guarantee against discriminatory legislation by Congress. * * * Even if discriminatory legislation may be so arbitrary and injurious in character as to violate the due process clause of the Fifth Amendment, * * * no such case is presented here." (Stone, C. J., in *Detroit Bank v. U. S.*, 317 U. S. 329; 87 L. ed., No. 6, p. 266, 63 Sup. Ct., No. 5, 297, Jan. 4, 1943.)

One justice did not participate but the decision was unanimous among those who did.

The property involved in the *Detroit Bank* case was held during the decedent's life by himself and his wife as tenants by the entirety. But that is of utterly no significance so far as the opinion goes. The decision stands simply and squarely for the proposition that for unpaid federal estate tax or federal gift tax the United States has a valid lien, subsisting for ten years from the date of death or gift, though unrecorded, which is good and valid against bona fide purchasers or mortgagees for value who acted in good faith and without notice. This should be of especial interest to lawyers passing upon titles to real estate.

Off the Record

BY A. H. WHITE*

(Continued from the November issue)

VI.

Justice Tully Scott was on the supreme court bench when Mr. Donald C. McCreery was being orally examined for admission to the bar. Judge Scott questioned the applicant something like this:

Scott: Mr. McCreery, what is the purpose of a demurrer?

McCreery: Usually delay. (All present smiled, including the members of the court.)

Scott: You are the son of the late James C. McCreery, a leading member of the Weld county bar, who had such a prominent part in establishing the irrigation laws of our state, are you not?

McCreery, meekly: Yes, sir.

Scott: That is all.

Mr. McCreery got the highest grades in his class on the entrance examinations.

From about 1900 to 1910, Justice Ben C. Hilliard enjoyed quite a large practice among the farmers in the prosperous section around Elizabeth. At one term of court one of his farmer clients came to Judge Hilliard and wanted the judge to defend his son, charged with some criminal offense. Judge Hilliard readily admitted that he was no expert in criminal law, yet he had to defend the young man, so he went to Mr. John F. Mail, doubtless attending court on some tax title matters. Mr. Mail had had no more experience in criminal practice than had Judge Hilliard, but he readily consented to help so far as he could. Mr. Mail took the task of examining the jury:

Q. What is your name? A. My name is Albert Wilson.

Q. How long have you lived in the community, Mr. Wilson?

A. Ever since the panic. (Meaning, of course, the panic of 1893.)

Mr. Mail: Mr. Wilson, you will have to be more specific. Every year is a panic with me.

Mr. Mail was also an interesting character. He came West after being admitted to the Indiana bar and settled at Rock Springs, Wyoming, but did not readily get established there, so came to Denver.

*Formerly Clerk of the Supreme Court of Colorado.

About that time much of the land in eastern Colorado had been entered by homesteaders in the late 'eighties or early 'nineties, and later abandoned. The settlers just moved away and the homesteads were all sold for taxes. It was the practice of the boards of county commissioners to sell the tax sale certificates for $75.00 a quarter section, so that the land would get back on the tax rolls. Mr. Mail became an expert on tax title matters and probably brought several hundred suits to quiet titles. He had all the rulings down in his memory. Judge Burke was on the district court bench in the thirteenth district and was hearing some of these cases. Mr. Mail presented his evidence in one case, when the court said, "Mr. Mail, you are wrong. I don't think you have made your case and unless you can amend your complaint, it will be dismissed." Mr. Mail replied, "All right, your Honor, all right, and if you will just hold to that ruling I'll win the next case I have to present."

When Mr. Mail made his last argument before the supreme court he was very ill. The court suggested that he be seated during his argument. Mr. Mail, holding on to the desk, said, "No, no thank you. My head is working, but I'm just tired."

When he returned to the clerk's office a friend asked the privilege of taking him downtown in his car. Mr. Mail asked if he was going downtown anyway, and the friend said he was not but that he would like to take Mr. Mail to his office. "Thank you," said Mr. Mail, "but I wont let you do anything of the kind. I can make it." He truly died in the harness.

VII.

Mr. James D. Pilcher was a real country lawyer, and a pretty forceful one, too. He could speak the language of the farmer and enjoyed quite a practice at Monte Vista. Mr. James P. Veerkamp, a lawyer of the same type, was usually the opposing counsel, but not in the case below related.

One of Mr. Pilcher's clients shipped about a thousand sheep from Santa Fe to Antonito over the "Chili Route" or the "Pinon Line," as that section of the Rio Grande railroad was called locally. About half of the sheep died en route and the shipper sued the company, charging the loss was due to ill treatment in transit. Judge George A. Luxford was defending. In addressing the jury, Mr. Pilcher really had a good time. Here is a portion of his argument, taken from the record:

After abusing the railroad's counsel, as well as the company's witnesses, he went into high gear, saying, "* * * and when they talk

about fairness they hadn't ought to be permitted to use the word in a court room or anywhere else; they have no more idea of the truth than did the scarlet woman of Babylon have of the immaculate conception." He continued, saying, "I tell you, gentlemen of the jury, Oscar Lord might well say: 'I had rather be on a ship of rock, on a sea of blood, with iron sails and leaden oars, and the wrath of an avenging God for a gale, and Hell my nearest port, and still expect to land on Canaan's happy shores rather than to expect justice from the Denver and Rio Grande Railroad Company'."

Judge Luxford was entering his objections whenever he could get a word in, but the verdict and judgment were for the plaintiff and Judge Luxford had to appeal the case to get relief. The judgment was set aside by the supreme court because of the above and similar remarks, as well as other irregularities.

I don't remember the parties to which this story is attached, but two attorneys over in the valley—Alamosa, I believe—entered into a law partnership which didn't last but a short time. One of the attorneys was met by a friend, who asked why the partnership had been dissolved. He replied, "Well, we were both disappointed. It didn't just work out. I thought he knew some law and he thought I had some money."

In 1883 the Colorado legislature elected two United States Senators, Bowen and Tabor. The practice then was to elect your friends to the legislature, who in turn would vote for you for the senate.

Alamosa was a thriving town then, the gateway to the great San Juan section, and a joint debate was held there as was popular in political campaigns of that era. Mr. Bowen answered and in the reply his opponent closed with words something like this: "And now, Mr. Bowen, I'll meet you at Armageddon." In conference with his workers after the meeting, Mr. Bowen is said to have remarked: "Now, boys, I don't know where in hell Armageddon is, but I think we should send a couple of men over there with some money right away."

VIII.

To really appreciate this story one should know the characters mentioned. I am telling it to the older members of the bar. One spring a sleet storm visited Denver. Several prominent attorneys met with accidents. Mr. Charlie Franklin fell and broke his arm. Others met with injuries and among the number was Mr. Edmund F. Richardson,

of that old law firm of Patterson, Richardson and Hawkins. In telling of Mr. Richardson's accident at a meeting of the Denver bar, Mr. Tom O'Donnell said, "The other morning Ed Richardson was walking down Colfax Avenue beside the capitol grounds, when his feet slipped from under him and down he went with a terrible jolt. The first part of his huge body to strike the sidewalk was the back of his head, and for the first time in his life Ed lost self-consciousness."

There are many more stories of this character which might be told. The late Senator Charles S. Thomas was an artist at it. Then of the present bar, Mr. John D. Haney and Mr. David P. Strickler of El Paso County are unexcelled in their ability to tell good stories in a most pleasing and enjoyable manner, while no bar can boast of better after dinner speakers than Mr. Justice Burke and Mr. Justice Hilliard of our supreme court.

IX.

I cannot close this chronicle without a few words of a personal nature. During the time I served the court some 2,400 attorneys were admitted to the bar; 8,270 cases were docketed, and the reports increased in number from forty-five to one hundred seven. I worked under twenty-seven different justices. It would be interesting, though entirely too personal, to write of the temper and mannerism of each, all different. Nearly every one of these men served as chief justice. Individuality was very pronounced. Some sought suggestions as to practice, while others wanted to go it alone. Of course it was the duty of the clerk to assist in any way possible and to do just as the chief justice desired.

One question was always difficult: How far should a clerk go when asked by an attorney as to the rules and practice? Many questions were quite simple. If a clerk said he did not know, the natural reaction of the attorney was, "The court should have a clerk who does know." One thing is very sure. A clerk should never make a suggestion to an attorney that he would not make if opposing counsel was present. I often admonished myself, "Don't try to decide the case: the court will do that. Remember, I am only the clerk."

To the members of the bench and bar of Colorado, I want to express my appreciation of the many kindnesses and courtesies shown me through the years. It was a privilege indeed to have been associated with them. For all of the knowledge gained and the benefits bestowed upon me during the forty years I was so closely associated with them, I am profoundly grateful.

Adams Express Company vs. Aldridge

His Honor, Judge Hastely, retired from the bench
After many, many years of making decisions;
He had long listened patiently to arguments endless,
In re torts, frauds, recovery, F.E.D.'s and rescissions.

But a few years retirement found him feeble and spent
And mortally ill, confined to his bed.
The toll of the Reaper he no longer could prevent,
So to his friends and kin he bade farewell, and said:

"I have presided in court, in bad weather and good,
And times without number heard defendant's lawyers deplore
That the complaint revealed nothing—in fact was terrific—
As they argued their motions to make more specific.

" 'Pray, your Honor,' they say, 'make the plaintiff display
How my client was careless, and state exactly in what manner and mode.
Mr. Smith was there tumbled, his viscera all jumbled;
His account is too meager, doesn't comply with the code.'

"Then plaintiff's attorney addresses the court
And declares there need be no exaction.
'Our complaint is sufficient, it tells of a tort,
And that's enough for a good cause of action.

" 'In truth and in fact, I could get by on less,
As was done in the case of the Adams Express.
The law is well stated at Page 74, Volume 20 C. A.
And directly in point on this hearing today.'

"Year in and year out, in timid tones and in bold,
They have cited that case their complaint to uphold.
No one ever read it, but all mistakenly maintained.
That I was familiar with the law it contained.

"My affairs are in order, my last will covers all:
I've left nothing undone except one, that I recall:
In this darkest moment, I am forced to confess,
Never have I read the case of the Adams Express."

—*Anonymous.*

Judge Phillips Appoints Committee to Consider J. P. and Traffic Court Problems

United States Circuit Court Judge Orie L. Phillips, chairman of the section on judicial administration of the American Bar Association, announces the appointment of two new committees to cooperate with the Junior Bar Conference campaign to improve the nation's traffic courts. This action is calculated to direct the attention of the leading federal and state court judges to the war and post-war problems confronting the many courts having jurisdiction of traffic court violations.

The committee to improve traffic courts will consider the municipal traffic court problems and consists of the following: Municipal Judge Earle W. Frost, Kansas City, Missouri, chairman; Supreme Court Justice Laurance M. Hyde, Jefferson, Missouri; Municipal Judge Perry A. Frey, Cleveland; Chief Justice Joseph M. Wyatt of the Baltimore City Traffic Court; Chief Justice Harry H. Porter of the Evanston Municipal Court, and Harvey D. Booth, Chicago, secretary of the committee of traffic court judges of the National Safety Council.

The committee to improve the justice of the peace courts is under the leadership of Chief Justice Phil S. Gibson of the California Supreme Court; Municipal Judge James W. Hodson, Seattle; Justice of the Peace Irvine C. Porter, Birmingham, Alabama; Justice of the Peace Chris B. Fox, Oakland, California, and Carroll A. Mealey, New York, past president of the American Association of Motor Vehicle Administrators. Judge Hyde will also serve as co-chairman of this committee.

Judge Phillips stated that the traffic courts are the gauge by which the entire judicial system is measured by the average citizen because this is usually his only contact with courts in an entire lifetime. He further stated, "I agree with the observation recently made by Arthur T. Vanderbilt, chairman of the national committee on traffic law enforcement, when he said: 'What our fellow citizens see and hear (and in some instances, smell) in our police courts, our traffic courts, and in proceedings before our justices of the peace, quite naturally determine our ideas of American justice.' The experience, it is pointed out, all too often has led to disrespect for law as well as for judges and lawyers."

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Announcement

of

1944 Essay Contest

Conducted by

AMERICAN BAR ASSOCIATION

Pursuant to terms of bequest
of Judge Erskine M. Ross, Deceased

Information for Contestants

Subject to be discussed:

"What Instrumentality for the Administration of International Justice Will Most Effectively Promote the Establishment and Maintenance of International Law and Order?"

Time when essay must be submitted:

On or before March 15, 1944.

Amount of Prize:

Three Thousand Dollars.

Eligibility:

Contest will be open to all members of the Association in good standing whose applications for membership in the Association have been received at the headquarters office of the Association in Chicago prior to January first of the calendar year in which the award is made, except previous winners, members of the Board of Governors, officers and employees of the Association.

No essay will be accepted unless prepared for this contest and not previously published. Each entryman will be required to assign to the Association all right, title and interest in the essay submitted and the copyright thereof.

An essay shall be restricted to five thousand words, including quoted matter and citations in the text. Footnotes or notes following the essay will not be included in the computation of the number of words, but excessive documentation in notes may be penalized by the judges of the contest. Clearness and brevity of expression and absence of iteration or undue prolixity will be taken into favorable consideration.

Anyone wishing to enter the contest shall communicate promptly with the Executive Secretary of the Association, who will furnish further information and instructions.

American Bar Association

1140 N. Dearborn Street Chicago, Ill.

Preliminary Draft of Federal Rules of Criminal Procedure Published

Several copies of the preliminary draft of the proposed Federal Rules of Criminal Procedure have been received by the Colorado Supreme Court Library. Interested persons may obtain copies from the Advisory Committee on Rules of Criminal procedure, Supreme Court of the United States, Washington 13, D. C.

The proposed rules would eliminate pleas in abatement, demurrers, motions to quash and pleas in bar. All preliminary defenses and objections would be consolidated in a single motion.

They also provide for: a simplified form of indictment; an adaptation of the pre-trial procedure; an expansion of the present procedure for taking depositions; the right in defendant to waive indictment and consent to be tried on information; that admissibility of evidence be governed by rules of common law as interpreted by federal courts; and for the abolition of exceptions as under the rules of civil procedure.

In addition, provision is made for effectuating the accused's right to counsel, for pre-sentence investigations, for a change of venue (not now included in federal law) and for simplified appellate procedure.